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VIA ECF

Honorable Raymond J. Dearie, USDJ
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 112017

RE: Opposition to British Airways' Motion to Strike (Dkt. 216)
Dover, et al. v. British Airways, PLC (UK), No. 12-cv-5567 (E.D.N.Y.)

Your Honor:

British Airways' motion (Dkt. 216) should be summarily denied. While BA asked this Court to strike references to Professor Robert Engle in Plaintiffs' class certification and summary judgment briefing, those references relate to pending *Daubert* and sanctions motions. (See Dkt. 213 at 15 n.11; SJ Br. at 9-10; SJ Br. at 10 n.3).¹ In particular, these references explain that testimony from one of BA's experts—Dr. Andrew Hildreth—is inadmissible because Dr. Hildreth did not use reliable methods. See Fed. R. Evid. 702. No principle of law precludes a party from citing pending evidentiary motions when briefing class certification or summary judgment, and Professor Engle was not referenced for any other purpose.

BA's characterization of the circumstances surrounding Professor Engle's declaration, moreover, is not correct. Plaintiffs contacted Professor Engle only because Dr. Hildreth submitted a surprise "sur-sur-sur reply" declaration in which Dr. Hildreth wrongly claimed to be using "the standard method as described by Engle and Granger[.]" (Dkt. 182 at 2.) Professor Engle simply set the record straight. (See *id.* at 1-2.) His declaration was offered: (1) only in connection with *Daubert* briefing; and (2) only if the Court considers Dr. Hildreth's sur-sur-sur reply, notwithstanding that it was submitted in violation of a Court Order (*see id.* at 4).²

Plaintiffs respectfully ask this Court to deny BA's motion in full.



Jason L. Lichtman

¹ The parties will file summary judgment briefing on February 25, 2015.

² Professor Engle's declaration is not offered as potential jury testimony. Should Plaintiffs seek leave to present rebuttal testimony from *any* witness not on their witness list (and were such leave granted), BA would of course have the opportunity to depose such witness at that time.